

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE**

THE GEWEKE COMPANY d/b/a
LARRY GEWEKE FORD¹

and

Case 20-CA-31889

MACHINISTS DISTRICT LODGE 190,
AUTOMOTIVE MACHINISTS LOCAL LODGE 2182,
INTERNATIONAL ASSOCIATION OF
MACHINISTS & AEROSPACE WORKERS, AFL-CIO

Shelly Brenner, Esq., San Francisco, California,
for the General Counsel.

*Donald E. Cope, Esq., of Fine, Boggs,
Cope & Perkins, LLP*, Sacramento, California,
for the Respondent.

*Antonio Ruiz, Esq., of Weinbe, Roger &
Rosenfeld*, Oakland, California, for the Union.

DECISION

Statement of the Case

Gerald A. Wacknov, Administrative Law Judge: Pursuant to notice a hearing in this matter was held before me in Yuba City, California on October 27, 2004. The charge was filed on May 14, 2004 by Machinists District Lodge 190, Automotive Machinists Local 2182, International Association of Machinists & Aerospace Workers, AFL-CIO (Union). On July 29, 2004, the Regional Director for Region 20 of the National Labor Relations Board (Board) issued a complaint and notice of hearing alleging a violation by The Geweke Company d/b/a Larry Geweke Ford (Respondent) of Section 8(a)(1) and (5) of the National Labor Relations Act, as amended (Act). The Respondent, in its answers to the complaint, denies that it has violated the Act as alleged.

The parties were afforded a full opportunity to be heard, to call, examine, and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing, briefs have been received from counsel for the General Counsel (General Counsel) and counsel for the Respondent.

Upon the entire record, and based upon my observation of the witnesses and consideration of the briefs submitted, I make the following:

¹ The caption reflects the correct name of the Respondent as amended at the hearing.

Findings of Fact

I. Jurisdiction

5 The Respondent is a California corporation engaged in the retail and non-retail sale of
automobiles and related products with its office and place of business located in Yuba City,
California. In the course and conduct of its business operations, the Respondent annually
receives gross revenues in excess of \$500,000, and annually purchases and receives at its
California facility goods valued in excess of \$5,000 which originated outside the State of
10 California. It is admitted and I find that the Respondent is, and at all material times has been, an
employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

II. The Labor Organization Involved

15 The parties stipulated, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. Alleged Unfair Labor Practices

20 **A. Issues**

25 The principal issue in this proceeding is whether the Respondent implemented a new health plan for its employees without affording the Union an opportunity to bargain about the implementation of the new health plan or the Respondent's monthly contribution to the employees' premiums, in violation of Section 8(a)(5) and (1) of the Act.

B. Facts

30 The Respondent operates a Ford Dealership in Yuba City, California. On August 11, 2003, the Union was certified as the collective bargaining representative of the Respondent's automotive technicians, shipping and receiving employees, parts driver, body shop parts man, front counter men and back counter men. This collective bargaining unit numbers some 24 employees.

35 The Respondent's owner also owns and operates various other enterprises located in
California. The employee complement of all such businesses totals approximately 500
employees. For many years all of these employees have been provided the opportunity to
participate in the same group health plan covering all of the Respondent's business enterprises.
40 The Respondent contributes part of the monthly premium for each participating employee, and
the remainder of the premium, and policy deductibles and co-payments, is the employee's
responsibility.²

The group health insurance contract is a one-year contract and expires on December 31 of each year. Premiums for each succeeding year are generally higher. Prior to December 31

² The Respondent has not established that it had a past practice of paying a fixed percentage of its employees' monthly health care premiums; rather, it appears that the Respondent determines the amount of its contribution on an *ad hoc* basis at each annual renewal of the contract and/or change of insurance carriers. Thus, there is no established *status quo* in this regard. See, *Post Tribune Co.*, 337 NLRB 1279, 1280 (2002); *Maple Grove Health Center*, 330 NLRB 775, 780-781 (2000).

of each year the employees are given the option of renewing their current coverage for the succeeding year or changing their coverage by selecting various options under the plan. According to the un rebutted testimony of Respondent's comptroller, Dianne Estes, the Respondent has changed group insurance carriers five or more times during the past nine years
 .5 in order to provide comparable coverage at the least possible cost both for itself and its employees.

The Union and Respondent commenced bargaining negotiations on September 11, 2003, and have met once or twice a month since that date. The Respondent's
 10 principal negotiator is Donald Cope, an attorney, and the Union's principal negotiator is Mark Martin, a business representative.

On October 1, 2003, the Union submitted its first bargaining package proposal. Regarding health insurance, the Union proposed that the Respondent continue in effect its then
 15 current health plan, and that the Respondent fund the entire cost of the monthly insurance premiums for the participating employees. Apparently, that continues to be the Union's health insurance bargaining position. In November, 2003, the Respondent submitted its bargaining proposals and, with regard to health care, proposed that the Respondent continue to provide its unit employees with the opportunity for health coverage under the same terms and conditions as
 20 its non-union employees.

At the bargaining session on December 12, 2003, Cope announced that on December 31, 2003, the current health plan would expire, and that there would be changes effective January 1, 2004. Martin asked what the changes would be, and requested that the
 25 Respondent bargain over any proposed changes prior to implementation of any changes. Cope also stated that the Respondent was looking into changing from its Blue Cross plan to a Great West insurance plan as the proposed 18 per cent premium increase in its current Blue Cross plan was "outrageous." During and subsequent to that meeting, the Union requested and was provided with information regarding both plans.

On December 19, 2003, the Respondent distributed to its employees a two-page document. The first page is a notification to all employees, both union and non-union, requiring them to attend one of four scheduled health insurance benefits meetings that day. The second
 30 page of the document is entitled "Geweke Companies Rate/Plan Comparison, Plan Year 2003 vs Plan Year 2004." It compares the monthly premium rates under the Blue Cross plan with the monthly premium rates under the Great West plan, and states, *inter alia*, that:

The current medical plans will not be offered as of 1/1/2004. We have enrolled all
 40 medical plans under 1 insurance carrier, Great West. Great West offers a variety of plans to accommodate the individual needs of each associate and their families, at a much lower cost to the associate. We are anticipating this to be beneficial to all associates in the entire Geweke Auto & RV Group. We are staying with Guardian Dental, and there are not changes in the benefits offered and no increase in the cost. There is no change to the Vision Plan, nor is there a rate increase. (Original emphasis.)

At a bargaining meeting on that day, December 19, 2003, Union Business
 45 Representative Martin objected to the Respondent's implementation of the new health insurance plan without affording the Union the opportunity to bargain over both the decision and effects of the change on the unit employees. Martin advised the Respondent that during negotiations the Respondent had an obligation to maintain the status quo with regard to employee benefits, namely, to maintain the same health care plan at the same current rates for the unit employees until health care had been negotiated. Cope replied, according to Martin, that "as long as the

that “as long as the unit employees are being offered the same thing as the non-unit employees, that there’s no change in status quo.” Cope said, according to Martin, that the Respondent did not have to bargain over health care changes “because it’s not a violation of status quo, and [Martin] can take it to the Board.” Cope also advised that as of January 1, 2004, the Respondent
 .5 would be increasing its contribution to the monthly premium for each enrolled employee from \$175 per month to \$200 per month.

By letter dated December 22, 2003, Martin reiterated his objections to the Respondent’s implementation of the new plan, and by letter dated, December 23, 2003, Cope replied, *inter alia*, as follows:
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As I stated to you at our bargaining session on December 19th, the status quo is that the unit members are provided with the same health insurance coverage at the same cost as all other Larry Geweke Ford employees. As I explained to you Geweke’s health
 15 coverage expires on December 31. Geweke was forced to explore other coverage options. Geweke has found alternative coverage at a comparable cost. Geweke actually increased its contribution to keep the employees’ contribution almost the same.

As I explained to you, this was not a voluntary or discretionary act on the part of Geweke. It was forced to find other coverage to maintain the status quo, not to change it.
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Geweke has provided you with information concerning the new coverage and we are more than willing to negotiate any affects that the new coverage might have on the unit employees. However, Geweke has maintained the status quo of providing coverage to the unit employees.
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Michael Hansen has been a licensed insurance agent in the State of California since 1989, and has worked with the Respondent as its benefits insurance broker since 1994. Hansen testified that although there are always differences in comparison between health insurance plans, the Blue Cross and the Great West plan are similar and are “considered comparable benefit plans.”
 30

The Respondent has made it clear that it has been willing to negotiate with the Union regarding the effects of the Great West plan upon the unit employees. It has asked the Union to bring to the Respondent’s attention any specific instances of additional expenses actually incurred by employees or their family members under the Great West plan that would not have been incurred under the Blue Cross plan. To date, the Union has not brought any such instances to the Respondent’s attention. Martin testified that because of lack of cooperation
 35 from the bargaining unit, and the failure of any employees to come forward, the Union had no information regarding how the unit employees were personally impacted.
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While the General Counsel has pointed out differences in the two plans, and while certain premiums, co-pays or deductibles may be higher or lower depending upon the employees’ selection of benefits, there is no credible record evidence that the change in plans from Blue Cross to Great West has caused any employee to pay more for health insurance on an annual overall or net basis. Nor is there any evidence that any employee has been precluded from utilizing the same physicians and hospitals that were available under the Blue Cross plan.
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B. Analysis and Conclusions

It is clear that the Respondent, without inviting or permitting any input from the collective bargaining representative of its unit employees, simply refused to negotiate with the Union regarding the implementation of a new health insurance plan, a mandatory subject of bargaining. Thus the Respondent unilaterally selected and implemented a new insurance plan for its unit employees, and unilaterally increased its monthly contribution per employee.

The record evidence shows that health insurance for the Respondent's employees is an employee benefit that is revisited annually on a company-wide basis. The Respondent takes the position that because it treats all of its union and non-union employees the same, it is never required to bargain with the Union over health insurance benefits. In support of this position the Respondent primarily relies on *The Carrier- Journal*, 342 NLRB No. 113 (September 17, 2004). In *The Carrier- Journal*, slip op. at 2, the Board states as follows:

The [health care] changes were implemented pursuant to a well-established past practice. For some 10 years, the Respondent had regularly made unilateral changes in the costs and benefits of the employees' health care program, both under the parties' successive contracts and during hiatus periods between contracts. In each instance the Union did not oppose the Respondent's changes. Like the previous changes, the Respondent's January 2002 changes for unit employees were identical to those for unrepresented employees, consistent with the "same benefits as" clause of the parties' successive contracts.

Thus, unlike the situation in the instant case, the contract between the union and employer in *The Carrier-Journal* contained contract terms providing that the employer could unilaterally change health insurance benefits for unit employees so long as such changes were identical to those for the employer's unrepresented employees; and this particular contract provision had been implemented by the employer, without objection from the union, for some 10 years. In the instant case, however, the Respondent and newly certified Union had no past relationship whatsoever and, accordingly, no past practice of permitting the Respondent to take unilateral action regarding health care or any other matter without first bargaining to impasse with the Union.

Health insurance is a mandatory subject of bargaining, and the fact that the Respondent has a past practice of providing the same health plan for all its employees on a company-wide basis does not exempt it from its bargaining obligation. *Hardesty Company, Inc. d/b/a Mid-Continent Concrete*, 336 NLRB 258, 259 (2001), *enfd.* 308 F3d 859 (8th Cir. 2002).

Had the Respondent agreed to bargain with the Union over the matter of health care, it is quite possible that the parties could have reached some mutual accommodation. Clearly there were critical time constraints due to the unavoidable increase in Blue Cross premiums that were to become effective on January 1, 2004. Had the parties reached an impasse after expedited and good faith negotiations, the Respondent would have been privileged to make timely unilateral changes over the Union's objection. However the new Great West plan, including the Respondent's increased monthly contributions, was presented as a *fait accompli*. Thus, with regard to health care issues, the Union was simply ignored and disregarded as the employees' collective bargaining representative. Moreover, it appears that the Respondent continues to adhere to this untenable position, and will continue to refuse to bargain with the Union over health care in the future. Accordingly, I find that the Respondent has violated and is continuing to violate Section 8(a)(5) and (1) of the Act as alleged.

Conclusions of Law

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2) (6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has violated and is violating Section 8(a)(1) and (5) of the Act as alleged in the complaint.

The Remedy

Having found that the Respondent has violated and is violating Section 8(a)(1) and (5) of the Act by unilaterally changing and implementing a new health care plan for its unit employees without bargaining with the Union regarding such changes and related matters, I recommend that it be required to cease and desist therefrom and from in any other like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act. I further recommend that the unit employees be made whole for any health care expenses they incurred in excess of what they would have incurred had the Respondent retained the Blue Cross plan with its 18 per cent January 1, 2004 increase in premiums. The reimbursement to employees shall be computed as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).³

I shall also recommend the posting of an appropriate notice, attached hereto as "Appendix."

ORDER⁴

The Respondent, The Geweke Company d/b/a Larry Geweke Ford, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Implementing a new health care plan without bargaining with the Union.

(b) Refusing to bargain with the Union regarding health care plans or the Respondent's contribution to health care plans.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

³ The General Counsel suggests that to remedy the violation the Union should be given the option of requiring the Respondent to restore the *status quo* by returning to the 2003 Blue Shield health care plan with its 2003 costs and benefits. This suggested remedy appears to be neither necessary nor possible, and the remedy provided herein seems appropriate under the circumstances.

⁴ If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

2. Take the following affirmative action, which is necessary to effectuate the purposes of the Act:

(a) Bargain with the Union, upon request, regarding health care plans and related issues.

(b) Make whole its unit employees for any health care expenses they have incurred in excess of what they would have incurred had the Respondent retained the 2003 Blue Cross plan with its 18% January 1, 2004 increase in premiums.

(c) Within 14 days after service by the Region, post at its facility copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by Respondent's authorized representative, shall be posted for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure the notices are not altered, defaced or covered by other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the attached notice to all current employees and former employees employed by the Respondent at any time since May 14, 2004.

(d) Within 21 days after service by the Regional Office, file with the Regional Director for Region 20 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated: December 29, 2004, San Francisco, California

Gerald A. Wacknov
Administrative Law Judge

⁵ If this Order is enforced by a judgment of the United States Court of Appeals, the wording in the notice reading, "Posted by Order of the National Labor Relations Board," shall read, "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing and Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES GOVERNMENT

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join, or assist a union.
Choose representatives to bargain with us on your behalf.
Act together with other employees for your benefit and protection.
Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain regarding health care issues with MACHINISTS DISTRICT LODGE 190, AUTOMOTIVE MACHINISTS LOCAL 2182, INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO as the collective bargaining representative of employees in the following unit:

All full-time and regular part-time automotive technicians, lubrication technicians, shipping and receiving employees, parts driver, body shop parts man, front counter men and back counter men employed by The Geweke Company d/b/a Larry Geweke Ford, excluding all other employees, business office clerical employees, guards, and supervisors as defined in the Act.

WE WILL negotiate in good faith with the Union, upon request, regarding all aspects of health care matters for our unit employees.

WE WILL make whole, with interest, our unit employees for any health care expenses they have incurred in excess of what they would have incurred under the 2003 Blue Cross plan with its 18 per cent January 1, 2004 increase in premiums.

WE WILL NOT in any like or related manner interfere with, restrain or coerce employees in the exercise of the foregoing rights guaranteed under Section 7 of the Act.

THE GEWEKE COMPANY, D/B/A
LARRY GEWEKE FORD

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

901 Market Street, Suite 400, San Francisco, CA 94103-1735
(415) 356-5130, Hours: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE

REGIONAL OFFICE'S COMPLIANCE OFFICER, (415) 356-5139.

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